REMARKS

Favorable reconsideration of this application as presently amended and light of the following discussion is respectfully requested. Claims 1-16 and 18-30 are pending, Claims 1-14 having been withdrawn from consideration, Claims 15 and 27 amended by way of the present amendment. No new matter is added.

In the outstanding Office Action the amendment to Claim 15 was objected to under 35 U.S.C. §132(a); Claims 15-16 and 18-30 were rejected under 35 U.S.C. §101; Claims 15-16 and 18-30 were rejected under 35 U.S.C. §112, second paragraph; Claim 27 was objected to as being in improper dependent form; Claims 15-16 and 18-30 were rejected as being anticipated by, or in the alternative obvious under 35 U.S.C. §103 as being obvious over Jaunich (U.S. Patent No. 6,605,880); dependent Claims 25-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jaunich and in further view of "Short-Term Wind Forecasting"; Claims 15-16 and 18-30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jaunich in view of Hasegawa et al. (U.S. Patent No. 6,563,234, hereinafter Hasegawa) and "Short-Term Wind Forecasting".

In reply, Claim 15 has been amended to change the term "prosecution" to --production-- to overcome the objection under 35 U.S.C. §1132(a). It is respectfully submitted that Claim 15 as amended is clear in that Claim 15 requires a step of keeping an account balance in a computer storage memory of an amount of energy, and subsequently fulfilling a production obligation of said renewable power production facility and producing said amount of energy by another power production facility on behalf of the renewable power production facility. The undersigned invites the Examiner to contact the undersigned if any of this language is unclear. It is believed that the description at page 12 of the previously filed Amendment makes clear that the "keeping" step requires the subsequent fulfilling of a

production obligation of a renewable power production facility. As such the present amendment does not raise a new issue. Accordingly, if the Office has particular issues with regard to the phraseology used in the pending claims, the Office is invited to contact the undersigned so that mutually agreeable claim language may be identified.

Turning to the rejection under 35 U.S.C. §101, Applicants object to this rejection in view of the Office's August 24, 2009 "New Interim Patent Subject Matter Eligibility Examination Instructions". These instructions require that the Office consider a claim to be considered as a whole when evaluated for patent eligibility. With regard to methods, such as Claim 15, the Instructions require that the claim be subject matter eligible if a particular machine is recited that imposes a meaningful limitation on the claim scope, for example, being more than a mere field-of-use limitation. Such is the case with Claim 15, which requires that determining with a hardware processor that a produced amount of power produced by the renewable power production facility deviates from a threshold by a predetermined quantity. By the way a "hardware" processor is intended to include programmable processors. Claim 15 also requires informing *via* digital communications, another power production facility of the predetermined quantity, and adjusting and applying to transmission lines a power output of the other power production facility by an amount that corresponds with the predetermined quantity. The claim further requires keeping an account balance in a computer storage memory of an amount of energy, and subsequently fulfilling a production obligation of said renewable power production facility and producing said amount of power by said another power production facility on behalf of the renewable power production facility. These claim elements cannot be misconstrued as anything but being related to a specific machine that has real-world implications that involve power production facilities, communication between the facilities, processors, and computer storage media, all of which are included in the body of Claim 15. As such, using the flowchart shown in the

Office's Instructions of August 24, 2009, because the claim requires that the method be implemented by a particular machine and the claim requires that the machine impose a meaningful limit on the claim scope, the claimed method is a patent eligible statutory process. Accordingly, Applicants respectfully traverse the rejection under 35 U.S.C. §101. Claims 16 and 18-30 depend from Claim 15 and therefore it is believed that these claims also patentably define patentable eligible subject matter for the reasons discussed above with regard to Claim 15.

With regard to the several rejections under 35 U.S.C. §101, the Examiner is invited to telephone the undersigned to address any ambiguities that the Office has recited in the outstanding Office Action. For example, at page 7, paragraph 5, the Office objects to it being unclear what is "a produced amount of power". The undersigned fails to appreciate what is ambiguous about this language since it expressly described "a produced amount of power produced by the renewable power production facility". On its face, this language is clear and therefore Applicants traverse the rejection of this claim language. Furthermore, in paragraph 5 of the outstanding Office Action, the Office objects to "deviates from a threshold by a predetermined quantity". The Office Action indicates this language is vague because an RPP facility produces a variable amount of electric power. Applicants once again traverse this assertion, because there is nothing ambiguous about an amount of power produced by a power production facility that deviates from the threshold by a predetermined quantity. By saying that an amount of power varies, would indicate that it would be impossible for the power company to charge a customer for an amount of power used because at any given instant that amount of power varied. Moreover, there is nothing ambiguous about an amount of power that is produced that could be compared with a threshold. To find otherwise would suggest that there is no adequate measure for power produced by power production facilities, which is an absurd result.

At page 8 of the Office Action, the Office Action objects to "step (e)", by objecting to the language "in a memory of an amount of energy...and producing said amount of energy". Once again, it is believed that this language is quite clear in that an account balance is kept in a computer storage memory of an amount of energy. The claim element further requires, when considered as a whole, that another power production facility subsequently fulfills a production obligation of the renewable power production facility by producing that amount of energy on behalf of the renewable power production facility. The Office Action seems to indicate that this language is vague because it is not clear what system or facility is associated with "an amount of energy". However, the amount of energy is defined in the claim language as being an amount that is produced by the another power production facility on behalf of the renewable power production facility. For example, if the renewable facility is legally obligated to deliver x kilowatts of power, and "another power production facility" delivers that x KW of power on behalf of the renewable facility , then the account keeps a tally of the x KM owed by the renewable facility to the another facility. Once again, the Examiner is invited to telephone the undersigned to address and identify mutually agreeable language.

With regard to the language "a prosecution obligation...", the term "prosecution" has been changed to "production", for clarity. Furthermore, at page 8, the Office Action indicates that it is unclear what is the relationship between the last two steps. The "adjusting and applying" step provides for power applied to transmission lines by another power production facility to compensate for the deviation from a threshold by the renewable power production facility. For example, the another power production facility can make up for a shortfall by the renewable power production facility. However, if the another power production facility does make up for that shortfall, then in the last step, an account balance is kept in a computer storage memory of the amount of energy used by the another power production facility so

that later an accounting can be made between the renewable power production facility and the owner of the another power production facility.

With regard to the objections to Claims 29 and 30, Applicants traverse the objection as Claims 29 and 30 provide mechanisms by which the adjusting step is performed.

Claim 27 has had its dependency amended as requested.

Applicants traverse the assertion that Jaunich discloses all the elements of Claim 15. While there are several differences between the claimed invention and Jaunich, a significant observable difference is that Jaunich simply does not keep an account balance in a computer storage memory of an amount of energy...as claimed. The basis of the rejection is that this feature is "inherently included in the teaching of Jaunich regarding meter readings by a computer system in order to provide proper billing by the utility company." This simply is not correct. Jaunich is directed to an energy system providing continual electrical power using wind generated electricity coupled with fuel driven electrical generators. Jaunich is not different than that discussed in the Background section of the patent application, which recognizes that a long term problem with wind power plants is that there has been no commercially viable way, in light of the price of fuel generated by other power plants, to effectively store electricity generated by windmills during periods of peak production, so as to make up for periods when the wind slows. Moreover, Jaunich relies on a dedicated secondary source that is not powered with wind to produce grid-compatible electric power. For example, a secondary generator 28 is used so that the combination of wind and natural gas provides the cleanest form of electric power generation available in the marketplace (column 3, lines 48-52). Such secondary generators are part of the wind system itself, which is used to provide a reliable source of energy through cooperation between the traditional energy source and the wind power generated source, although the combination is done for the benefit of curing lulls in the wind power production sources.

It is respectfully submitted that the Office has not met its burden of making a rejection based on inherency, according to M.P.E.P. §2112, which requires that because "a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic" In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). Moreover, to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art". Moreover, inherency may not be established by probabilities or possibilities. Such is the case with the present application. The Office Action asserts that "an account balance that is kept in a computer readable memory of an amount of energy to be produced by said amount of by said another power production facility on behalf of the renewable power production facility" is necessarily included in Jaunich. Applicants traverse this assertion. Jaunich provides no such suggestion and can operate perfectly fine without any type of accounting being made between the wind power generator, and the "secondary generator 28". According to Jaunich, the secondary generator 28 runs simultaneously with the wind generator 16 to "ensure that the utility company 12 receives the power capacity of the wind generator 16 on demand even if there is no wind or outage". Moreover, the secondary generator 28 acts as a backup source and must be able to provide at least equivalent power. (Column 3, lines 38-53). As such, it is respectfully submitted that the outstanding Office Action has failed to make a *prima facie* case of obviousness, or anticipation, as nothing in Jaunich inherently includes the claimed "keeping step". Similarly, Applicants traverse the assertion that Jaunich includes the feature of "subsequently fulfilling a production obligation of said renewable power production facility by producing said amount of energy by another power production facility on behalf of the renewable power production facility". The production of energy by the another power production facility, as claimed, is used to keep an account balance in a computer storage

memory of an amount of energy that is provided on behalf of renewable power production facility. Jaunich simply does not have this feature.

Likewise, page 13 of the outstanding Office Action, alleges a number of other "inherencies" that Applicants traverse are not necessarily included in Jaunich. On this basis it is respectfully submitted that Jaunich simply does not anticipate, nor render obvious Claim 15. Similarly, Claims 16, 18 and 19-22 also patentably define over the asserted prior art. In the case of dependent Claims 19-22, Applicants traverse the characterization of these claims "which basically deal with well known energy price and delivery optimization of renewable power sources...". The Office is merely using hindsight reasoning based on Applicants' disclosure.

Therefore, it is respectfully submitted that Claims 19-22 patentably define over Jaunich.

Similar objections are made based on the rejection of Claims 24-30 as Jaunich not inherently or explicitly disclosing all the features of Claim 15 or the dependent claims that depend therefrom. The outstanding Office Action relies on the secondary reference of "Short Term Wind Forecasting", in the rejection of Claims 25 and 26. Even assuming *arguendo* that "Short-Term Wind Forecasting" cures the deficiencies with regard to Claim 15, this disclosure does not cure the deficiencies with regard to Jaunich in Claim 15 as discussed above and therefore these claims patentably define over Jaunich in view of "Short-Term Wind Forecasting".

The outstanding Office Action also rejects Claim 15 based on the combination of Jaunich, Hasegawa and "Short-Term Wind Forecasting". In this case, the Office Action outlines where Jaunich is used to allegedly disclose all the features of claim elements A)-D). Then, the Office Action provides a summary of Hasegawa, without a reading of how Hasegawa compares to the rest of Claim 15. Presumably the Office Action is relying on

Hasegawa as disclosing the claimed "keeping an account balance..." step, but when reviewing the Office Action's description, this is not expressly alleged, nor does Hasegawa describe such a system. Instead, Hasegawa merely describes a stabilization system that combines the use of a rechargeable battery system to account for power variations. Once again, Hasegawa is merely trying to resolve the same problems that are described in the Background section of the present application (e.g., page 2, lines 14-24), which Applicants have described as being an inadequate approach to providing a system that would allow for the viable production of wind produced power on a commercial scale. As such it is respectfully submitted that no matter how Jaunich, Hasegawa and "Short-Term Wind Forecasting" are combined, the combination does not teach or suggest all the elements of amended Claim 15. For similar reasons it is respectfully submitted that Claims 16 and 18-30, also patentably define over Hasegawa over Jaunich in view of Hasegawa and Short-Term Wind Forecasting as described above with regard to Claim 15.

Consequently, in view of the present amendment and in light of the foregoing comments it is respectfully submitted that the invention defined by Claims 15-16 and 18-30, as amended, do not add new matter, are definite, are patent eligible, and patentably distinguish over the asserted prior art. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully submitted,

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